



1 clearly received the Order dismissing the FAC with leave to amend  
2 because on September 28 he returned it to the Court, simply  
3 signing his name on the last page.

4 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (per  
5 curiam), examined when it is appropriate to dismiss a pro se  
6 plaintiff's lawsuit for failure to prosecute. See also Link v.  
7 Wabash R.R., 370 U.S. 626, 629-30 (1962) ("The power to invoke  
8 [dismissal] is necessary in order to prevent undue delays in the  
9 disposition of pending cases and to avoid congestion in the  
10 calendars of the District Courts."). A court must consider "(1)  
11 the public's interest in expeditious resolution of litigation;  
12 (2) the court's need to manage its docket; (3) the risk of  
13 prejudice to the defendants; (4) the public policy favoring  
14 disposition of cases on their merits[;] and (5) the availability  
15 of less drastic sanctions." Carey, 856 F.2d at 1440.  
16 Unreasonable delay creates a rebuttable presumption of prejudice  
17 to the defendants that can be overcome only with an affirmative  
18 showing of just cause by the plaintiff. See In re Eisen, 31 F.3d  
19 1447, 1452-53 (9th Cir. 1994).

20 Here, the first, second, third, and fifth Carey factors  
21 militate in favor of dismissal. In particular, Plaintiff has  
22 offered no explanation for his failure to file an amended  
23 complaint fixing the deficiencies identified by the Magistrate  
24 Judge. Thus, he has not rebutted the presumption of prejudice to  
25 Defendants. No less drastic sanction is available, as the FAC  
26 fails to state a claim and cannot proceed, and Plaintiff is  
27 unable or unwilling to comply with the instructions for fixing  
28 his allegations. Because none of his claims can proceed, the

1 Court is unable to manage its docket. Although the fourth Carey  
2 factor weighs against dismissal – as it always does – together  
3 the other factors outweigh the public’s interest in disposing of  
4 the case on its merits. See Ferdik v. Bonzelet, 963 F.2d 1258,  
5 1261-63 (9th Cir. 1992) (as amended) (upholding dismissal of pro  
6 se civil-rights action for failure to timely file amended  
7 complaint remedying deficiencies in caption); Baskett v. Quinn,  
8 225 F. App’x 639, 640 (9th Cir. 2007) (upholding dismissal of pro  
9 se civil-rights action for failure to state claim or timely file  
10 amended complaint).

11 **ORDER**

12 Accordingly, this action is dismissed for failure to  
13 prosecute and failure to state a claim.

14 LET JUDGMENT BE ENTERED ACCORDINGLY.

15  
16 DATED: November 3, 2022



STEPHEN V. WILSON  
U.S. DISTRICT JUDGE

18 Presented by:



Jean Rosenbluth  
U.S. Magistrate Judge